

# INVOLUNTARY SEPARATIONS

Chapters: The Commander's  
Ultimate Administrative Tool

SSG Tony Diaz

NCOIC, Criminal Law Division

AMEDDC&S and Fort Sam Houston

tony.garciadiaz@samhouston.army.  
mil

(210) 295-9296



# AGENDA

- ◆ Overview
- ◆ Common Requirements
- ◆ Types of Discharges
- ◆ Specific Chapter Requirements



# OVERVIEW

- ◆ “Soldier, you’re fired!”
- ◆ Due Process
- ◆ AR 635-200, Enlisted Personnel Separations
  - Factual Basis
  - Procedural Compliance
  - Notice
  - Opportunity to Respond



# COMMON REQUIREMENTS



- ◆ Counseling
- ◆ Rehabilitation Transfer
- ◆ Medical Exam
- ◆ Mental Exam
- ◆ Trial Defense Service Appointment

# TYPES OF DISCHARGES

- ◆ Honorable
- ◆ General Under Honorable
- ◆ Under Other Than Honorable
- ◆ Uncharacterized (if you have less than 181 days time in service)

# SEPARATION AUTHORITY

- ◆ Honorable Discharge: SPCMCA and or GCMCA
- ◆ General Discharge: SPCMCA
  - Brigade CDR
- ◆ Other Than Honorable: GCMCA
  - Commanding General
- ◆ Over 18 Years: Department of the Army

# BOARD REQUIREMENT

- ◆ Required if over 6 years of service.
- ◆ Required if OTH possible.
- ◆ Chapter 15 always.
- ◆ May be waived, except if soldier is over 18 years of service.



# SPECIFIC CHAPTER REQUIREMENTS



- ◆ Each has a different combination of requirements.
- ◆ Coordination with the brigade paralegal is essential.
- ◆ Trial Counsel is a key player.



# CHAPTER 5-8

## Involuntary Separation due to Parenthood

- ♦ Parenthood: Soldiers must arrange for the care of their family members so as to be available for duty when and where the needs of the Service dictate; be able to perform assigned military duties without interference; and remain eligible for worldwide assignment. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. IAW para 5-5b, AR 600-20, the following soldiers are required to maintain an adequate family care plan:
  - ♦ 1. A pregnant soldier who –
    - ♦ (a) Has no spouse; is divorced, widowed, or separated; or is residing without her spouse.
    - ♦ (b) Is married to another service member of an Active or Reserve component of any service (Army, Air Force, Navy, Marines or Coast Guard)
  - ♦ 2. A soldier who has no spouse; is divorced, widowed, or separated, or is residing apart from his or her spouse; who has joint or full legal and physical custody of one or more family members under the age of 19 or who has adult family member(s) incapable of self-care regardless of age.
  - ♦ 3. A soldier who is divorced (not married) and who has liberal or extended visitation rights by court decree which would allow family members to be solely in the soldier's care in excess of 30 consecutive days.
  - ♦ 4. A soldier whose spouse is incapable of self-care or is otherwise physically, mentally, or emotionally disabled so as to require special care or assistance.
  - ♦ 5. A soldier categorized as half of a dual-military couple of the AA or RC of any service (Army, Air Force, Navy, Marines or Coast Guard) who has joint or full legal custody of one or more family members under age 19 or who has adult family member(s) incapable of self-care regardless of age. .
- ♦ Counseling Required.
- ♦ Discharge: Honorable, General or Uncharacterized.

# CHAPTER 5-13

## Separation because of Personality Disorder

- ♦ Personality Disorder: Under the guidance of chapter 1, section II, a soldier may be separated for personality disorder (not amounting to disability (see AR 635-40)) that interferes with assignment or with performance of duty, when so disposed as indicated below:
- ♦ The condition is deeply ingrained maladaptive pattern of behavior of long duration that interferes with the soldier's ability to perform duty. (Exceptions: combat exhaustion and other acute situational maladjustment). **The diagnosis of personality disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components.**
- ♦ Counseling Required.
- ♦ Discharge: Honorable, General, or Uncharacterized.

# CHAPTER 5-17

## Other designated physical or mental conditions

- ♦ Other designated Physical Or Mental Conditions: Soldiers will be considered for involuntary separation under this paragraph on the basis of Other physical or mental conditions not amounting to disability (AR 635-40) (excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13), that potentially interfere with assignment to or performance of duty. IAW para 5-17a, AR 635-200, such conditions may include, but are not limited to, suicidal tendencies, chronic airsickness or seasickness, sleepwalking, dyslexia, severe nightmares, claustrophobia, and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the soldier's ability to effectively perform military duties is significantly impaired. **The diagnosis must be established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components.**
- ♦ Counseling Required.
- ♦ Discharge: Honorable, General or Uncharacterized

# CHAPTER 9

## Alcohol or other Drug Abuse Rehabilitation Failure

- ♦ Alcohol or other Drug Abuse Rehabilitation Failure: This chapter provides the authority and outlines the procedures for discharging soldiers for alcohol and other drug abuse rehabilitation failure. Soldier is entitled to request a hearing before an administrative separation board if he/she has 6 or more years of total active and reserve military service per paragraph 2-2c(5). A soldier who has less than 6 years is not entitled to a board. Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when:
  - ♦ --The soldier is enrolled in Army Substance Abuse Program (ASAP)
  - ♦ --The commander determines that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. (See AR 600-85)
- ♦ Counseling and Rehabilitation Transfer Not Required.
- ♦ Discharge: Honorable or General

# Chapter 11

## Entry Level Performance and Conduct

- ♦ In order for a soldier to qualify for this chapter, the command **must initiate the chapter** while the soldier is on the initial 180 days of continuous active military service. Soldier qualifies for separation under this chapter if the soldier displays unsatisfactory performance or minor disciplinary infractions as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment. **Furthermore, pursuant to paragraph 11-3c, if a soldier is in an entry level status and qualifies for separation for unsatisfactory performance (Chapter 13) or for a Pattern of Misconduct (14-12b), separation processing will be accomplished under this chapter.**
- ♦ **Counseling and rehabilitation requirements are essential when entry-level performance and conduct are the reason for separation.**
- ♦ **Discharge: Uncharacterized**

# CHAPTER 13

## Separation for Unsatisfactory Performance

- ♦ Commanders will separate a soldier for unsatisfactory duty performance when it is determined that the soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier; or the seriousness of the circumstances is such that the soldier's retention would have an adverse impact on military discipline, good order, and morale; and it is likely that the soldier will be a disruptive influence in present or future duty assignments; the soldier's ability to perform duties effectively is unlikely; and the soldier's potential for advancement or leadership is unlikely. Pursuant to paragraph 13-2e, AR 635-200, initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness per AR 350-1 or who are eliminated for cause from Noncommissioned Officer Education System (NCOES) courses, unless the responsible commander chooses to impose a bar to reenlistment per AR 601-280.
- ♦ Counseling and Rehabilitation Transfer Required.
- ♦ Discharge: Honorable or General

# CHAPTER 14-5

## Conviction by Civil Court

- ♦ Civilian Conviction: A soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings:
  - ♦ A punitive discharge authorized for the same or a closely related offense under the MCM 2005, as amended.
  - ♦ The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.
- ♦ Counseling and Rehabilitation Transfer Not Required.
- ♦ Discharge: Honorable, General, Other Than Honorable or Uncharacterized

# CHAPTER 14-12a

## Minor Disciplinary Infractions

- ♦ Minor Military Disciplinary Infractions: Soldiers are subject to separation per this chapter if there is a pattern of misconduct consisting solely on minor military disciplinary infractions. Except as provided in paragraph 11-3c, if separation of soldier in entry-level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under chapter 11.
- ♦ Counseling and Rehabilitation Transfer Required.
- ♦ Discharge: Honorable, General, Other Than Honorable or Uncharacterized



# CHAPTER 14-12b

## Pattern of Misconduct

- ♦ Pattern of Misconduct: Soldiers are subject to separation per this chapter for the discreditable involvement with civil or military authorities and/or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct that violates accepted standards of personal conduct found in the UCMJ, Army Regulations, the civil law, and time-honored customs and traditions of the Army.
- ♦ Counseling and Rehabilitation Transfer Required.
- ♦ Discharge: Honorable, General, Other Than Honorable or Uncharacterized

# CHAPTER 14-12c

## Commission of a Serious Offense

- ♦ Commission of a Serious Offense: A soldier may be separated for the commission of a serious offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the MCM, or for the following reasons:
  - ♦ 1. An absentee returned to military control from a status of AWOL or desertion may be separated for commission of a serious offense.
  - ♦ 2. Abuse of illegal drugs is serious misconduct:
    - ♦ a. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under a or b, above, as appropriate.
    - ♦ b. All soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge or against whom separation will not be initiated under the provision of chapter 9, or section II of this chapter will be processed under a, b, or c, above as appropriate.
  - ♦ (1) "Processed for separation" means that separation will be initiated and processed through the chain of command to the separation authority for appropriate action.
  - ♦ (2) The immediate and intermediate commander will recommend separation or retention,
  - ♦ (3) The separation reason in all separations authorized by this paragraph will be "misconduct- abuse of illegal drugs."
- ♦ Counseling and Rehabilitation Transfer Not Required.
- ♦ Discharge: Honorable, General, Other Than Honorable or Uncharacterized

# Chapter 15

## Discharge for Homosexual Conduct

- ♦ Homosexual Conduct: Before initiating any action regarding homosexuality, **CONTACT YOUR TRIAL COUNSEL!!!!**
- ♦ Homosexual conduct is grounds for separation from the Army under the criteria set forth in paragraph 15-3. This includes pre-service, prior service, or current service homosexual conduct.
- ♦ The term homosexual conduct includes homosexual acts, statements(s) that demonstrate a propensity or intent to engage in homosexual acts, or homosexual marriage or attempted marriage.
- ♦ A statement that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the Soldier's sexual orientation, but because the statement indicates the likelihood that the soldier engages in, or will engage in, homosexual acts.
- ♦ Counseling and Rehabilitation Transfer Not Required.
- ♦ Discharge: Honorable, General, Other Than Honorable or Uncharacterized

# CHAPTER 18

## Failure to Meet Body Fat Standards

- ♦ Failure to Meet Body Fat Standards: Soldiers who fail to meet the body fat standards set forth in AR 600-9 are subject to separation under this chapter when such condition is the sole basis for the separation. Soldiers who have been diagnosed by health care personnel as having a medical condition preventing them from participating in the Army body fat reduction program will not be separated under this chapter. IAW AR 600-9 and IAW AR 635-200, a commander may separate a soldier who is in the weight control program under the following circumstances:
- ♦ If there is no underlying medical conditions and a soldier enrolled in the Army Weight Control Program fails to make satisfactory progress (**weight loss of 3-8 pounds per month is required for satisfactory progress**) separation will be considered.
- ♦ Initiation of separation proceedings is required for soldiers who fail to meet body fat standards during the 12-month period following removal from the program, provided no medical condition exists.
- ♦ Further procedures are outlined IAW AR 600-9, paragraph 21g-k.
- ♦ 1. Do the Sample Correspondence Memorandums for Weight Control Program as outlined in AR 600-9. pages 8-9.
- ♦ 2. Monitor/account for monthly progress of soldier through monthly weight-ins on DA Forms 5500-R &/or 5501-R with Counseling Statements (DA Form 4856).
- ♦ Counseling Required.
- ♦ Discharge: Honorable or General



# QUESTIONS?